

**Federal Defenders  
OF NEW YORK, INC.**

Southern District  
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David E. Patton  
*Executive Director*

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September 17, 2021

*By e-mail and by ECF<sup>1</sup>*

Honorable Alvin K. Hellerstein  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *United States v. David Wagner*, 19 Cr. 437 (AKH)

Defendant's request for an extension is DENIED. The reasons provided for an extension are an insufficient basis to delay further the beginning of the period of custody.  
SO ORDERED.

Alvin K. Hellerstein  
September 30, 2021

Dear Judge Hellerstein:

I write to respectfully request that the Court extend Mr. Wagner's surrender date from October 26, 2021 until January 17, 2022 to allow Mr. Wagner to receive a third Covid vaccination shot – as recommended by his physicians – before undergoing surgery. The Government – per Assistant United States Attorney Sagar Ravi – “objects to any further extension of Mr. Wagner’s surrender date,” and plans “to file a short response” to this request.

On January 11, 2021, the Court sentenced Mr. Wagner to 72 months’ imprisonment, and set a surrender date of June 15, 2021. As described in our letter-motion dated May 11, 2021, the earliest date Mr. Wagner could receive necessary surgery [REDACTED] was September 27, 2021. See Dkt. No. 112. The Court endorsed our request to extend the surrender date to October 26, 2021, so that the surgery could be performed and Mr. Wagner could have time to recover before beginning his six-year term of imprisonment. See Dkt. No. 113.

As indicated in the attached letters, both Mr. Wagner’s primary care physician (Dr. John Horan) and surgeon (Dr. Karl Breuing) have now recommended that Mr. Wagner postpone his surgery until he can receive a third dose of the Covid vaccine, which will be available to Mr. Wagner on November 8, 2021. See letter of Dr. Horan, Ex. A (“Because of the increase in Covid cases in Rhode Island due to the Delta variant of the SARS-Covid virus, and increased number of hospitalizations in Rhode Island I have advised him to postpone [REDACTED]

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<sup>1</sup> Information concerning sensitive medical information has been redacted in the public filing of this letter.

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contracting the delta variant of the corona virus.”). The earliest date available for surgery after the third vaccine is administered is now November 22, 2021, and his surgeon has indicated that Mr. Wagner will be able to return to normal activity any time after January 17, 2022. *See* letter of Katie Goodridge, attached as Exhibit B.

Accordingly, we respectfully request that the Court extend Mr. Wagner’s surrender date to January 18, 2022 or any date thereafter.

Respectfully submitted,

/s/  
Martin S. Cohen  
Ass’t Federal Defender  
Tel.: (212) 417-8737

cc: Jilan Kamal and Sagar Ravi, Esqs., by e-mail